



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 30, 2004

Dr. D.C. Jim Dozier
Executive Director
Texas Commission on Law Enforcement
6330 U.S. Highway 290 East, Suite 200
Austin, Texas 78723

OR2004-2523

Dear Dr. Dozier:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 201466.

The Texas Commission on Law Enforcement (the "commission") received a request for the training, qualification, resignation, and termination records of two named individuals. The commission has released all of the information to the requestor except for the F-5 form, which the commission asserts is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure information made confidential by law, including information made confidential by other statutes. The submitted information consists of a Notice of Termination. This form, commonly referred to as an "F-5," is subject to section 1701.454 of the Occupations Code. Section 1701.452 requires that a law enforcement agency submit a report to the commission regarding an officer licensed under chapter 1701 whose appointment with the law enforcement agency is terminated. *See Occ. Code § 1701.452.* Section 1701.454 provides:

- (a) A report or statement submitted to the commission under this subchapter is confidential and is not subject to disclosure under Chapter 552 of the Government Code, unless the person resigned or was terminated due to

substantiated incidents of excessive force or violations of the law other than traffic offenses.

(b) Except as provided by this subsection, a commission member or other person may not release the contents of a report or statement submitted under this subchapter. The report or statement may be released only by the commission employee having the responsibility to maintain the report or statement and only if:

(1) the head of a law enforcement agency or the agency head's designee makes a written request on the agency's letterhead for the report or statement accompanied by the agency head's or designee's signature; and

(2) the person who is the subject of the report or statement authorizes the release by providing a sworn statement on a form supplied by the commission that includes the person's waiver of liability regarding an agency head who is responsible for or who takes action based on the report or statement.

Occ. Code § 1701.454. You inform us that the F-5 form does not meet the criteria for disclosure provided under section 1701.454. Therefore, the commission must withhold the F-5 form pursuant to section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code.

Finally, the commission asks that we issue a previous determination permitting the commission to withhold the F-5 forms under section 1701.454 of the Occupations Code without the necessity of again seeking a decision from this office. Having considered your request, we decide that this letter ruling shall serve as a previous determination under section 552.301(a) for such information.

This previous determination applies only to the F-5 forms where exceptions to confidentiality enumerated in section 1701.454 do not apply. Moreover, so long as the elements of law, fact and circumstances do not change so as to no longer support the findings set forth above, the commission need not ask for a decision from this office again with respect to the F-5 forms requested of the commission. *See* ORD 673 at 7.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place

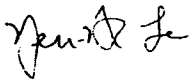
that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss of the Texas building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/seg

Ref: ID# 201466

Enc. Submitted documents

c: Mr. Ruben Gonzalez
Ruben Gonzalez, P.C.
1701 River Run, Suite 502
Fort Worth, Texas 76107
(w/o enclosures)